

2009-11

>>> Clerk Info 9/23/2009 1:28 PM >>>

>>> "Bill Cowdry" <bcowdry@charter.net> 9/23/2009 12:58 PM >>>
To the Clerk of the Court, Michigan Supreme Court.

As a defense attorney I feel that the proposed changes to 6.302 would hinder the candor between the Prosecuting Attorney and the defense attorney to disclose the strengths and weaknesses of the case from the two views. To be forced to place the plea discussion on the record may put the Defendant and his counsel at odds and lead to more breakdowns of attorney client relationships. Unfortunately some Defendants cannot accept the facts of the case. A more appropriate revision to the rule would be to place the results of the plea discussion on the record and ask the Defendant on the record if he/she understands the agreement and concurs with the agreement. The record might be made to reflect:

1. Whether the agreement is the complete agreement.
2. Whether sentencing is part of the agreement.
3. Whether the Defendant understands the agreement and is willing to enter into the agreement.

These three things should cover the Courts concerns about the voluntariness of the plea.

As to MCR 6.310 I think that this rule would abrogate the Killebrew decision. See People v Killebrew, 416 Mich 1982. The problem with these changes is that many Judges will not enter into a sentencing agreement pursuant to People v Cobbs, 443 Mich 276 (1993) without reviewing a Pre Sentence Investigation report first. If MCR 6.310 is changed, any sentencing agreement that the Prosecutor endorses would be illusory if the Courts can be allowed to sentence the Defendant outside of recommendations of the Prosecutor.

Further, the Court's dockets may be fuller because the change will result in less plea negotiations or more Cobbs discussions. Further it evictively would overturn People v Killebrew without the issue of the case being properly revisited by the Court.

Thank you for allowing my views of these issues.

Sincerely,

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